No. 92-1625

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA, and
UNITED MINE WORKERS OF AMERICA, DISTRICT 28,
Petitioners,

v.

JOHN L. BAGWELL, CLINCHFIELD COAL CO.,
and SEA "B" MINING CO.,
Respondents.

On Writ of Certiorari to the Supreme Court of Virginia

BRIEF FOR PETITIONERS

ROBERT H. STROPP, JR.
EARL V. BROWN, JR.
900 15th Street, N.W.
Washington, D.C. 20006

JOHN R. MOONEY
1341 G Street, N.W.
Washington, D.C. 20005

WALTER KAMIAT
LAURENCE GOLD
(Counsel of Record)
815 16th Street, N.W.
Washington, D.C. 20006
(202) 637-5390

Of Counsel:

ANDREW P. MILLER
2101 L Street, N.W.
Washington, D.C. 20037

VIRGINIA A. SEITZ
1000 Connecticut Ave., N.W.
Washington, D.C. 20036

DAVID L. SHAPIRO
1525 Massachusetts Avenue
Cambridge, MA 02138

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

48 pp

QUESTIONS PRESENTED

1. In *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 443 (1911), this Court declared that, in the context of contempt proceedings, the "distinction between *refusing to do an act commanded* (remedied by imprisonment until the party performs the required act), and *doing an act forbidden* (punished by imprisonment for a definite term)" is a distinction that is "sound in principle, and generally, if not universally, afford[s] a test by which to determine the [civil or criminal] nature of the punishment." 221 U.S. at 443 (emphasis added). *See also Hicks v. Feiock*, 485 U.S. 624 (1988) (reaffirming *Gompers* in context of contempt fines). Against this background, the first question presented here is:

> Whether—as the Virginia Supreme Court held below—a contempt proceeding may be treated as civil in nature (so that none of the constitutional requirements for a criminal contempt proceeding need be followed) where the defendant is charged with having taken certain completed actions that were *prohibited* by previously imposed judicial orders, and where a finding by the court that the defendant took such prohibited actions leads to the sentencing of the defendant to pay to the court (or the state) substantial fines (in fixed amounts not measured by any harm suffered by a civil party) that the court had established at the time of its initial orders.

2. In *Gompers v. Buck's Stove & Range Co., supra,* this Court—in passing on the claim that a civil contempt proceeding survived the settlement of the main civil case that generated the contempt proceeding—held that civil contempt proceedings, unlike criminal contempt proceedings, "necessarily end[] with the main cause": "When the main case was settled, every proceeding which was dependent on it, or a part of it, was also necessarily settled." 221 U.S. at 451. Against this background, the second question presented here is:

Whether—as the Virginia Supreme Court held below—a contempt proceeding may be treated as civil when it generates substantial non-compensatory contempt fines that survive the full settlement of the main civil case solely in order that the court may vindicate its own authority.

3. Whether the non-compensatory civil contempt fines of $52 million at issue here were so excessive as to violate the Excessive Fines Clause of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES: Page

TABLE OF AUTHORITIES—Continued

Page

STATUTES

TREATISES AND LAW REVIEWS

TABLE OF AUTHORITIES—Continued

IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

No. 92-1625

INTERNATIONAL UNION,
UNITED MINE WORKERS OF AMERICA, and
UNITED MINE WORKERS OF AMERICA, DISTRICT 28,
Petitioners,

v.

JOHN L. BAGWELL, CLINCHFIELD COAL CO.,
and SEA "B" MINING CO.,
Respondents.

On Writ of Certiorari to the Supreme Court of Virginia

BRIEF FOR PETITIONERS

OPINIONS BELOW

The decision of the Supreme Court of Virginia is reprinted in the separately bound appendix to the *certiorari* petition ("Pet. App.") at 1a-20a and is published at 244 Va. 463, 423 S.E.2d 349. The decision of the Court of Appeals of Virginia is reprinted at Pet. App. 25a-37a and published at 12 Va. App. 123, 402 S.E.2d 899. The decisions and orders of the Circuit Court of Russell County, Virginia, are reprinted at Pet. App. 39a-121a and in the Joint Appendix ("J.A.") at 28-37.

JURISDICTION

The Supreme Court of Virginia entered its decision on November 6, 1992, and denied petitioners' timely petition

for rehearing on January 8, 1993. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution are reprinted in relevant part at Pet. App. 124a.

STATEMENT OF THE CASE

1. This action arises from a strike by the members of International Union, United Mine Workers of America, and United Mine Workers of America, District 28 ("the Union"). The strike was called against two affiliated coal companies, Clinchfield Coal Co. and Sea "B" Mining Co. (the "Company"), on April 4, 1989, to protest the Company's unfair labor practices. On April 12, 1989, the Company filed a bill of complaint against the Union in the Circuit Court of Russell County, Virginia, alleging various unlawful strike-related activities—including actions of interference and intimidation by strikers and their supporters directed against those engaged in the Company's operations—and seeking to have the court enjoin the Union from engaging in such activities. The next day, April 13, 1989, the court granted the injunction.

On April 21, 1989, the court, upon the Company's Motion to Amend the Temporary Injunction, modified and strengthened its injunction. The court restrained and enjoined the Union, its officers, agents, servants, employees and members from engaging or attempting to engage in numerous broadly framed categories of acts. Pet. App. 114a-115a.

On May 16, 1989, on the motion of the Company, the court held its first contempt hearing. As was the case in every contempt hearing below, the proceeding was conducted as a civil proceeding tried to the judge who had issued the injunction, rather than as a criminal proceeding tried to a jury (and subject to the applicable criminal

procedure requirements of the United States Constitution). And, as was the case in virtually every hearing below, the Union contended that the vast number of alleged violations of the injunction were not actions attributable to the Union.

At the May 16 hearing, the trial court found that there had been 72 separate violations of its previously entered injunctions—including 15 instances of violence, 43 instances of exceeding picket numbers, 10 instances of blocking ingress and egress to the Company's facilities, and 4 instances of technical violations of the amended injunction, and therefore fined the Union $440,000. Pet. App. 109a-112a.

At this hearing, the court also established a prospective fine schedule for future violations. The schedule provided for fines of $100,000 for each future incident involving any violence in violation of the injunction, and $20,000 for each future incident not involving violence. In addition, these fines were to "double each day, without limitation." Pet. App. 111a.

On June 7, 1989, following another motion of the Company, the trial court held a second contempt hearing, found the Union in contempt, and imposed fines totalling $2,465,000. Pet. App. 102a-108a.

For three days, July 19-21, 1989, the trial court held a third contempt hearing at the motion of the Company. The court entered a third contempt order on July 27, 1989, which fined the Union a total of $4,465,000. Pet. App. 97a-101a.

On September 21, 1989, the trial court, at the motion of the Company, issued its fourth contempt order, imposing fines totalling $16,900,000. In this order, the court empowered the Company's attorneys to collect all the fines imposed on or after July 27, 1989, *viz.* all fines except those issued pursuant to the first two contempt orders. Pet. App. 83a-89a.

On October 9, 1939, the fifth contempt order was issued, at the motion of the Company, imposing fines of $6,900,000. Pet. App. 71a-76a.

The sixth, seventh, and eighth contempt orders were entered in November and December, 1989, at the motion of the Company, imposing fines in the amount of $33,400,000. Pet. App. 55a-68a.

As already noted, in all of these contempt proceedings, the contempts were treated as civil in nature, and the trial judge served as the sole trier of fact, while the Union was denied the various safeguards accorded to defendants in criminal contempt. And, in many instances, the Union was held responsible by the trial judge for violations of his injunctions under circumstances where the perpetrators of the incidents in question were never identified.[1]

In total, the trial court levied over $64,000,000 in fines against the Union.

2. The Union timely noticed appeals of the first five orders to the Virginia Court of Appeals where they were consolidated. (*"Clinchfield I"*). While this appeal was pending, the Company and the Union continued to negotiate to resolve their labor dispute and, on January 1, 1990, announced a full settlement of this dispute with the help of a "super mediator" appointed by the United States Secretary of Labor. The agreement also specifically provided that the parties would dismiss all pending litigation and would have vacated all outstanding civil judgments, including the contempt fines. Accordingly, on January 24, 1990, the Company and the Union jointly moved the trial court to dismiss the Company's cause and vacate all outstanding contempt fines.

[1] For example, in one instance, even where testimony consisted only of a witness having seen a pair of hands throwing a rock, the Union was fined $100,000. J.A. 153-155. In many other instances, the Union was held responsible for actions on the sole basis that perpetrators were attired in camouflage clothing, which was treated by the court as a striker "uniform." There are also incidents where unidentified perpetrators were not so attired, and the Union was nonetheless held responsible and fined $100,000 for each incident. *See, e.g.*, J.A. 80-84, 98-99, 124-127, 135-139, & 190-191.

At a hearing held on February 12, 1990, the trial court announced from the bench that it would refuse to vacate the contempt fines at issue, explaining its reasoning in terms of the continuing need to vindicate the court's authority. J.A. 38-61; *see also* pp. 26-27 & n.12, *infra* (quoting decision). In a letter opinion dated August 22, 1990, which reaffirmed its refusal to vacate the fines, that court amplified its reasoning. Pet. App. 39a-49a; *see also* p. 27 n.12, *infra* (quoting opinion).

On September 11, 1990, the trial court entered a final order granting the parties' motion to dismiss the Company's civil cause against the Union. Additionally, that court dissolved the injunctions and vacated those fines payable to the Company. However, the trial court also entered a final order refusing to vacate the remaining $52,000,000 in fines, directing the Union to pay these fines to the clerk of the court, and—in light of the dismissal of the underlying civil cause and the Company's motion to vacate the pending contempt fines—appointing John L. Bagwell as a special commissioner charged with defending and collecting those fines. Pet. App. 50a-52a.

Shortly thereafter, Bagwell moved to intervene in the *Clinchfield I* appeal.

3. Following the September 11, 1990 decision of the trial court, the Union filed a second appeal seeking reversal of, *inter alia*, the sixth, seventh and eighth contempt orders, the order granting in part and denying in part the joint motion to vacate and dismiss, and the order substituting Bagwell as special commissioner. (*"Clinchfield II"*).

4. In an opinion and order dated March 26, 1991, the Virginia Court of Appeals decided *Clinchfield I*. The decision denied Bagwell's petition to intervene and ordered

that the fines imposed against the Union under the first five contempt orders be vacated. Pet. App. 34a-37a. The court of appeals—choosing to apply state law, but noting that, on its understanding, the state law parallels the applicable federal law—held that, even if the fines at issue were civil in nature, "civil contempt fines imposed during or as a part of a civil proceeding between private parties are settled when the underlying litigation is settled by the parties and the court is without discretion to refuse to vacate such fines." Pet. App. 36a.

5. Following this decision by the Virginia Court of Appeals, Bagwell, despite the denial of his request for party status, petitioned for appeal to the Supreme Court of Virginia. Specifically, Bagwell sought to appeal both the denial of his petition to intervene and the vacation of the fines in light of the parties' settlement. The Union opposed the appeal and moved to dismiss. The Virginia Supreme Court deferred consideration of these motions.

On March 5, 1992, the Virginia Supreme Court granted Bagwell an appeal in *Clinchfield I*. At the same time, that court certified *Clinchfield II*, which had been fully briefed and argued and was pending on appeal in the Virginia Court of Appeals. The two cases were then treated as consolidated.

In a decision dated November 6, 1992, the Virginia Supreme Court noted that the Union had appealed the underlying contempt orders, "contend[ing] that the fines are criminal in character and, therefore, are invalid because they were imposed without the mandated constitutional protections." Pet. App. 12a. That court rejected that contention holding that the fines at issue were not criminal in nature, but rather were civil in nature. Pet. App. 15a-16a.

The Virginia Supreme Court also rejected the Union's argument that under federal and state law these fines, if civil, must be vacated as a consequence of the full settlement of all disputes between the parties. The court explained that "[c]ourts of the Commonwealth must have the authority to enforce their orders by employing coercive civil sanctions if the dignity of the law and public respect for the judiciary are to be maintained." Pet. App. 17a. And the Virginia court granted party status to Bagwell so he could "uphold the validity of the subject fines." Pet. App. 11a.

On January 8, 1993, the Virginia Supreme Court denied the Union's petition for rehearing. The Union then timely petitioned this Court for a writ of certiorari. That petition was granted on June 1, 1993.

SUMMARY OF ARGUMENT

A. "Criminal contempt is a crime in the ordinary sense" and "in every fundamental respect." *Bloom v. Illinois*, 391 U.S. 194, 201 (1968). *Accord, United States v. Dixon*, —— U.S. ——, 61 L.W. 4835 (June 28, 1993). State criminal contempt proceedings must therefore meet the Constitution's requirements for the trial and punishment of crimes, not simply the requirements for the adjudication of civil matters. Indeed, this Court has emphasized that these criminal procedure protections are of heightened importance in the contempt context, since allegations of "a rejection of judicial authority" may "strike[] at the most vulnerable and human point of a judge's temperament." *Bloom*, 391 U.S. at 201-202. *See* pp. 12-13, infra.

That being so, a state may not deny a defendant those constitutional protections by characterizing as a civil contempt proceeding that which, in substance, is a criminal contempt proceeding. *See* pp. 14-15, *infra*. The instant case presents two questions that are fundamental to the proper classification of contempt proceedings as civil contempt or as criminal contempt.

First, whether a contempt proceeding may be treated as civil in nature—so that none of the constitutional requirements for a criminal contempt proceeding need be followed—where the defendant is charged with having

taken certain completed actions that were *prohibited* by previously imposed judicial orders, and where a finding by the court that the defendant took such prohibited actions leads to the sentencing of the defendant to pay to the court substantial and noncompensatory fines, in fixed amounts that the court had established at the time of its initial orders, with the obligation to pay such fines not made subject to any ability of the defendant to purge.

Second, whether a contempt proceeding may be treated as civil in nature when the contempt fines produced by the proceeding are deemed to survive the full settlement of the main civil case, solely in order that the court is able to use those fines to vindicate its own authority.

Both of these questions have been resolved by the prior decisions of this court.

1. As to the first of these questions, this Court has established "a test by which to determine the character of the punishment" and, through that test, to classify the contempt proceeding as civil contempt (and therefore predominantly "remedial" in nature, "for the benefit of the complainant") or criminal contempt (and therefore predominantly "punitive" in nature, "to vindicate the authority of the court"). *Hicks v. Feoick,* 485 U.S. 624, 631, 633 (1988) (*quoting Gompers v. Buck's Stove & Range Co.,* 221 U.S. 418, 441, 443 (1911)). Under this test, the proper province of civil contempt is confined to the levying of sanctions against a defendant for "refusing to do an act commanded," or the ordering of compensation. In contrast punishments against a defendant for having "do[ne] an act forbidden," are the proper province of criminal contempt. *Id. See* pp. 14-16, *infra.* This distinction—which has been recognized for decades in the jurisprudence of this Court—serves the larger interest in confining civil contempt to those situations in which a contempt order is uniquely "remedial," because the order can directly "undo or remedy" the injury caused by the contempt (by coercing a withheld act or providing compensation), while including in criminal contempt all those

situations in which the sanction, like a normal criminal sanction, "cannot undo or remedy" what has been done, but instead operates as a "punishment or deterrence." *Hicks,* 485 U.S. at 632-33, 634-35 (*quoting Gompers,* 221 U.S. at 442, 443, and *Shillitanti v. United States,* 384 U.S. 368, 370 n.5 (1966)). *See* pp. 17-19, *infra.*

Under this Court's decision in *Hicks* and *Gompers,* the contempt sanctions here—involving unconditional fines, payable to the state, for completed actions that were allegedly violative of a prohibitory order—are the paradigm of *criminal contempt sanctions. See* pp. 20-21, *infra.*

The Virginia Supreme Court attempted to classify the contempt orders in this case as civil by formulating a new test for distinguishing criminal contempt and civil contempt based on whether the judge announces his intended sanction before the allegedly contemptuous conduct, as opposed to after a determination that the court's prohibitory order has been violated. That distinction is contrary to the law of this Court, and fails to distinguish between contempt proceedings that are *in substance* criminal in nature and proceedings that are *in substance* civil in nature. *See* pp. 21-25, *infra.*

2. The second of the questions posed by this case is also governed by this Court's precedents. In *Gompers,* this Court held that sanctions imposed in civil contempt proceedings—which, as just noted, are imposed for the remedial purposes of a civil complainant—"necessarily end[] with the settlement of the main cause of which [the civil contempt proceeding] is a part." 221 U.S. at 452. *See also* 221 U.S. at 451 ("When the main case was settled every proceeding which was dependent on it, or a part of it, was also necessarily settled."). *See* pp. 27-37, *infra.*

The Virginia courts held that the instant case did not end with the full settlement of all claims by private parties, because that settlement did not account for the public interest in vindicating the authority of the courts.

That rationale is defective in that it intermixes the distinct purposes of criminal contempt and civil contempt, and by so doing, authorizes the use of *civil* contempt to vindicate that public interest which it is the unique purpose of criminal contempt to vindicate. *See* pp. 25-27, *supra.*

This Court has given full recognition to the needs of the courts to vindicate their authority despite the full settlement of all civil contempt proceedings. The *Gompers* case, while holding that *civil* contempt proceedings are *not* the permissible means of serving these needs, also upholds "the power and right of the court to punish for contempt by . . . a separate and independent proceeding at law for criminal contempt." 221 U.S. at 451. *See,* pp. 28-29, *infra.*

Because the Virginia courts refused to proceed in this fashion—and, accordingly, denied to petitioners those criminal procedure protections that the Constitution provides—the "civil" contempt sanctions in question must be reversed.

B. In addition to—and conceptually quite separate from—the foregoing questions, this case presents the question of whether the $52 million of contempt fines at issue here (among the largest contempt judgments ever entered) are excessive under the constitutional prohibitions against excessive penalties.

The court below proceeded on the premise that "civil" and "coercive" contempt fines are *not* subject to the constitutional limits of the Eighth Amendment's Excessive Fines Clause or the Fourteenth Amendment's Due Process Clause. But the logic of the decisions rendered by this Court last Term make clear that those limits *do* apply to such fines. *See Alexander v. United States,* —— U.S. ——, 61 L.W. 4796 (1993); *Austin v. United States,* —— U.S. ——, 61 L.W. 4811 (1993); *TXO Production Corp. v. Alliance Resources Corp.,* —— U.S. ——, 61 L.W. 4766 (1993). Accordingly, the contempt fines at issue—if they are not reversed on the bases discussed

above—should be vacated and remanded for consideration in light of these intervening cases. *See* pp. 37-40, *infra.*

ARGUMENT

I. THE ISSUES CONCERNING THE CONSTITUTIONAL DISTINCTION BETWEEN CRIMINAL CONTEMPT AND CIVIL CONTEMPT

A. The Imposition of Substantial, Fixed Contempt Fines, Payable to the Court, for the Commission of Acts in Violation of a Prohibitory Order

This Court's decisions make it plain that a contempt proceeding growing out of an underlying private civil case is *criminal* in its nature, and is therefore a proceeding governed by the Constitution's basic criminal procedure requirements, if the contempt order: (1) rests on an adjudication that the defendant has committed a wrong by acting in contravention of a prohibition in the underlying court order, (2) imposes on the defendant, as a sanction for the commission of those acts, a fine that is substantial, determinate, non-compensatory, and payable to the court (or the state), and (3) structures the sanction so that the defendant, once he has acted, can not thereafter purge the contempt.

It is our submission that the contempt proceeding below was just such a proceeding and that the Virginia Supreme Court committed error in determining that the proceeding—which that court characterized as one in civil contempt—was properly tried solely by the judge who issued the underlying prohibitory order, without providing the defendants' basic, constitutionally-mandated criminal procedure protections, most particularly the right to a jury trial.

Given the nature of that submission, we turn first to a demonstration that this Court's well-established decisions do stand for the legal rule stated above. We then consider the Virginia Supreme Court's suggestion for a new and different rule for delimiting criminal contempt, and show that the Virginia Court's rule is not only in conflict

with the rule this Court has followed for over 75 years, but also is plainly inferior to this Court's rule.

1. At the conclusion of the last Term, this Court noted that "It is well established that criminal contempt, at least the sort enforced through nonsummary proceedings, is 'a crime in the ordinary sense.' *Bloom* [*v. Illinois*, 391 U.S. 194], at 201 [(1968)]. *Accord, New Orleans v. The Steamship Co.*, 20 Wall. 387, 392 (1874)." *United States v. Dixon*, —— U.S. ——, 61 L.W. 4835, 4837 (June 28, 1993).[2] Precisely because criminal contempt is an integral component of the criminal law, the *Dixon* Court added:

> We have held that constitutional protections for criminal defendants other than the double jeopardy provision apply in nonsummary criminal contempt prosecutions just as they do in other criminal prosecutions. *See, e.g., Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 444 (1911) (presumption of innocence, proof beyond a reasonable doubt, and guarantee against self-incrimination); *Cooke v. United States*, 267 U.S. 517, 537 (1925) (notice of charges, assistance of counsel, and right to present a defense); *In re Oliver*, 333 U.S. 257, 278 (1948) (public trial). We think it obvious, and today hold, that the protection of the Double Jeopardy Clause likewise attaches. [61 L.W. at 4837].

And, very much to the point here, the holding of *Bloom, supra*, is that "The Constitution guarantees the right to jury trial in state court prosecutions for contempt just as it does for other crimes." 391 U.S. at 199-200.

The reasoning behind this treatment of criminal contempt could not be more straightforward. In the cases

[2] *Dixon*'s reference to "the sort [of criminal contempts that have been] enforced through nonsummary proceedings," is a reference to all criminal contempts other than those committed in the actual presence of the court, so that the judge sees or hears the conduct constituting the contempt. It has always been understood that such direct contempts in the presence of the court call for distinct treatment, and may be dealt with summarily by the judge. *See, e.g.*, Fed. R. Crim. P. 42(a). This case presents no such situation.

cited by *Dixon*, as in many others, this Court has emphasized that "criminal contempt is a crime in every fundamental respect; it is a violation of the law, a public wrong which is punishable by fine or imprisonment or both." *Bloom*, 391 U.S. at 201. *See also id.* n.3 (*quoting* numerous prior cases). As *Bloom* states:

> [C]onvictions for criminal contempt are indistinguishable from ordinary criminal convictions, for their impact on the individual defendant is the same. Indeed, the role of criminal contempt and that of many ordinary criminal laws seem identical—protection of the institutions of our government and enforcement of their mandates. [391 U.S. at 201.][3]

The *Bloom* Court further explained that the circumstances of criminal contempt present an additional and particularly "compelling argument" for applying the Constitution's criminal due process "protection against the arbitrary exercise of power": *viz.*, "[c]ontemptuous conduct, though a public wrong, often strikes at the most vulnerable and human qualities of a judge's temperament," since the conduct alleged "represents a rejection of *judicial* authority." 391 U.S. at 202 (emphasis added). In other words, as this Court has put it, "the power to [punish] for contempt . . . is an 'arbitrary' power which is 'liable to abuse.'" *Id.* (*quoting Ex parte Terry*, 128 U.S. 289, 313 (1888)).[4]

[3] This Court's repeated holdings that criminal contempt is "a crime in the ordinary sense," and that criminal contempt proceedings are therefore to be conducted in accord with basic criminal procedures, follows the rule that has been followed throughout most of English legal history. *See Gompers v. United States*, 233 U.S. 604, 610-611 (1914).

[4] *See also Nye v. United States*, 313 U.S. 33 (1941); *Cooke v. United States*, 267 U.S. 517, 539 (1925); *Ex Parte Hudgings*, 249 U.S. 378 (1919); *Green v. United States*, 356 U.S. 165, 198-199

2. (a) Like the question of the constitutional status of criminal contempt proceedings, the "question of how a court determines whether to classify the relief imposed in a given proceeding as civil or criminal in nature, for purposes of applying the Due Process Clause and other provisions of the Constitution, is one of long standing, and its principles have been settled at least in their broad outlines for many decades." *Hicks v. Feiock*, 485 U.S. 624, 631 (1988).

The "fundamental proposition" guiding the making of this determination is that *"criminal penalties may not be imposed on someone who has not been afforded the protections that the Constitution requires of such criminal proceedings . . . . See, e.g., Gompers* [*v. Buck's Stove & Range Co.*, 221 U.S. 418, 444 (1911)]". *Hicks*, 485 U.S. at 632 (emphasis added).

Given this proposition, it follows—as *Gompers* and *Hicks* hold—that a contempt proceeding *is* a criminal contempt proceeding if it generates a contempt sanction that has every hallmark of a "criminal penalty." And, the Court has emphasized that a *criminal* contempt order is one that, like a normal criminal sentence, serves the interests of "punishment or deterrence," *Hicks*, 485 U.S. at 634-35 (*quoting Shillitani v. United States*, 384 U.S. 368, 370 n.5 (1966)), and does not serve the interests of "undo[ing] or remedy[ing] what has been done nor afford-[ing] any compensation" to the complainant, *Hicks*, 485 U.S. at 633 (*quoting Gompers*, 221 U.S. at 442). It is

---

(1958) (Black, J. dissenting). *Cf. In re Murchison*, 349 U.S. 133, 136-137 (1955):

> **[O]ur system of law has always endeavored to prevent even the probability of unfairness. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome . . . . *Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer.* [Emphasis added.]**

such a proceeding that must be conducted in conformtiy with the constitutional requirements that govern the conduct of criminal proceedings.

In contrast, contempt proceedings that are part of the underlying civil proceedings and generate purely remedial contempt sanctions for the direct benefit of the civil complainant, are *civil* contempt for all constitutional purposes.

In sum, "If [the proceeding] is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court." *Hicks*, 485 U.S. at 631 (*quoting Gompers*, 221 U.S. at 441).

(b) Where the contempt order is unambiguously punitive in its character—or unambigiously remedial—then the proper constitutional classification of the contempt proceeding as criminal or civil is straightforward. Where the order's purpose and effect are less clear cut, the matter assumes a greater complexity. As the *Hicks* Court explained:

> Although the purposes that lie behind particular kinds of relief are germane to understanding their character, this Court has never undertaken to psychoanalyze the subjective intent of a State's laws and its courts, not only because that effort would be unseemly and improper, but also because it would be misguided. In contempt cases, both civil and criminal relief have aspects that can be seen as either remedial or punitive or both; when a court imposes fines and punishments on a contemnor, it is not only vindicating its legal authority to enter the initial court order, but it also is seeking to give effect to the law's purpose of modifying the contemnor's behavior to conform to the terms required in the order . . . . *For these reasons, this Court has judged that conclusions about the purposes for which relief is imposed are properly drawn from an examination of the char-*

acter of the relief itself. [*Hicks*, 485 U.S. at 635-36 (emphasis added).]

Accordingly, this Court has cut through the complexity of classifying criminal and civil contempts by recognizing "[t]he distinction between refusing to do an act commanded, —remedied by imprisonment until the party performs the required act; and doing an act forbidden, —punished by imprisonment for a definite term," and the Court has stated that this distinction "is sound in principle, and generally, if not universally, affords a test by which to determine the character of the punishment." *Hicks*, 485 U.S. at 632-33 (*quoting Gompers*, 221 U.S. at 443).[5]

---

[5] The Court has on many occasions reiterated the distinction between "refusing to do an act commanded" (subject to civil contempt) and "doing an act forbidden" (subject only to criminal contempt), *see, e.g., Shillitani, supra*, 384 U.S. at 368 (contrasting civil contempt, where "the act of disobedience consisted solely in refusing to do what had been ordered, with criminal contempt, which involves "doing what had been prohibited"); *Penfield v. SEC*, 330 U.S. 585, 590 (1947) (describing civil contempt as the use of "coercive sanctions to compel the contemnor to do what the law has made it his duty to do"); *Doyle v. London Guaranty & Accident Co.*, 204 U.S. 599, 605 (1907) (civil contempt is "the coercion of the opposite party to do some act for the benefit of another party to the action").

Earlier state cases and English common law sources recognized the same distinction. *See, e.g., Phillips v. Welch*, 11 Nev. 187, 190 (1884) ("If the contempt consist in the refusal of a party to do something which he is ordered to do for the benefit or advantage of the opposite party, the process is civil, and he stands committed until he complies with the order . . . . If, on the other hand, the contempt consists in a threatened act injurious to the other party, the process is criminal, and conviction is followed by a penalty of fine or imprisonment, or both, which is purely punitive."); *Wellesley v. Duke of Beaufort*, 2 Russ. & M. 639, 667 (1831) ("the distinction between civil and criminal contempts . . . has been recognized by the Court of the King's Bench . . . . The former was the case of non-performance of an award, made a rule of Court, and so might be regarded as technically speaking and in form an offense. But the Court held that as it related simply to a civil matter, and was

(c) This mandatory/prohibitory distinction provides an accurate measure of whether the contempt proceeding is criminal in its nature or civil. Where a defendant has "refus[ed] to do an act commanded," a contempt penalty can directly "undo or remedy" the contempt (by coercing a withheld act). *Hicks*, 485 U.S. at 632-633 (*quoting Gompers*, 221 U.S. at 442, 443).[6] In contrast, where the defendant has, as an accomplished fact, "do[ne] an act forbidden," a contempt penalty "cannot undo or remedy what has been done." *Id.* Because the wrongful act and any injury the act caused are accomplished facts in the latter case, a contempt penalty operates primarily as "punishment or deterrence," as would a traditional criminal sanction. *Hicks*, 485 U.S. at 634-35 (*quoting Shillitani*, 384 U.S. at 370 n.5).

Moreover, in the former case—where the contempt penalty is directed at compelling the performance of an affirmative act—the penalty can be structured to be of a wholly "conditional nature," so that the defendant "can

---

rather in the nature of process to compel the performance of a specific act, the matter was in substance not criminal but civil"). *See also* S. Rapalje, *A Treatise on Contempt*, § 21, p. 25 (1884) ("civil contempts are those *quasi*-contempts which consist in failing to do something which the contemnor is ordered by the court to do for the benefit or advantage of another party to the proceeding before the court"); 1 Daniell, *Chancery Practice*, 464 (2d ed., London, 1845) ("An ordinary contempt in process, as it is a matter merely between the parties, may be cleared by the contemnor doing the act, by the non-performance of which the contempt was incurred, and paying to the other party the costs he has occasioned by his contumacy").

In many ways, this distinction between mandatory orders and prohibitory orders mirrors the familiar distinction between acts and omissions. *See DeShaney v. Winnebago Cty. Dept. of Social Services*, 489 U.S. 189, 192 (1989).

[6] The *Gompers* Court gave the following illustrations of such civil contempt orders:

> If a defendant should refuse to pay alimony, or to surrender property ordered to be turned over to a receiver, or to make a conveyance required by a decree for specific performance, he could be committed until he complied with the order. [221 U.S. at 442.]

end the [penalty] and discharge himself [from contempt] at any moment by doing what he had previously refused to do." *Hicks,* 485 U.S. at 633 (*quoting Gompers,* 221 U.S. at 442). In this sense, the punitive aspects of the sanction are subordinated to its remedial aspects, since the civil contemnors, even after committing a contempt, "carry the keys of their prison in their own pockets." *Id.* at 633 (*quoting In re Nevitt,* 117 F. 448, 461 (8th Cir. 1902)). *See Shillitani,* 385 U.S. at 370-71 ("The conditional nature of the [sanction]—based entirely upon the contemnor's continued defiance—justifies holding civil contempt proceedings absent the safeguards of indictment and jury.").

(d) Taking all of the foregoing into account, the *Hicks* Court set out "a few straightforward rules" for determining whether a contempt order is criminal or civil:

> If the relief provided is a sentence of imprisonment, it is remedial if "the defendant stands committed unless and until he performs *the affirmative act* required by the court's order," and is punitive if "the sentence is limited to imprisonment for a definite period." If the relief provided is a fine, it is remedial when it is paid to the complainant, and punitive when it is paid to the court, though a fine that would be payable to the court is also remedial when the defendant can avoid paying the fine simply by performing *the affirmative act* required by the court's order. [485 U.S. at 631-632 (*quoting Gompers,* 221 U.S. at 442; emphasis added).]

And, the particular rule that *Hicks* stated with respect to contempt fines—that a noncompensatory fine of a determinate nature, made payable to the court, is a "punitive" or "criminal" sanction—is a rule that the Court has followed for more than a century. *See e.g., Penfield Co. v. SEC,* 330 U.S. 585, 594 (1947) ("[w]hen the court imposes a fine [payable to the court] as a penalty, it is punishing yesterday's contemptuous conduct" and therefore imposing a criminal sanction); *Nye v. United States,* 313 U.S. 33,

43 (1941) (an order that "imposes unconditional fines payable to the United States . . . awards no relief to a private suitor" and is therefore criminal); *Union Tool Co. v. Wilson,* 259 U.S. 107, 109-110 (1922) (unconditional and noncompensatory fine payable to court treated as punitive in nature); *Re Merchants' Stock & Grain Co.,* 223 U.S. 639, 640-642 (1912) (same); *Re Christensen Engineering Co.,* 194 U.S. 457, 461 (1904) (same); *New Orleans v. The Steamship Co.,* 20 Wall. 387 (1874) (same).[7]

---

[7] Despite the lengthy exposition of these legal principles in *Hicks,* the Virginia Supreme Court suggested that this Court, in *United States v. United Mine Workers,* 330 U.S. 258 (1947), authorized the use of "coercive" civil contempt sanctions in the context of a prohibitory injunction, and thereby abandoned the mandatory/prohibitory distinction articulated in *Gompers.* This suggestion is doubly flawed.

First, the Virginia court's reading of the *Mine Workers* opinion flies in the face of the *Hicks* opinion. *Hicks,* as we have shown, treats *Gompers* as authoritative in this regard and does not so much as suggest that *Mine Workers* varies *Gompers* in any way.

Second, an examination of this Court's opinion in *Mine Workers* reveals that it does rest on and apply the principles set out in *Gompers.* At the time the coercive civil contempt fines at issue in *Mine Workers* were imposed, the United Mine Workers were in violation of a trial court's orders requiring the Union to take certain steps toward bringing about the cessation of an unlawful strike. This Court read those orders as imposing on the Union the obligation to take the following discrete, affirmative acts, the doing of which would avoid the imposition of the fines:

> [1] by withdrawing unconditionally the notice given by it, signed John L. Lewis, President, on November 15, 1946, to J.A. Krug, Secretary of the Interior, terminating the Krug-Lewis agreement as of twelve o'clock midnight, Wednesday, November 20, 1946, and [2] by notifying, at the same time, its members of such withdrawal in substantially the same manner as the members of the defendant union were notified of the notice to the Secretary of the Interior above-mentioned; and [3] by withdrawing and similarly instructing the members of the defendant union of the withdrawal of any other notice to the effect that the Krug-Lewis agreement is not in

(e) The contempt orders here have each and every one of the *Gompers-Hicks* hallmarks of a "criminal penalt[y]," *Hicks,* 485 U.S. at 632:

First, the contempt proceedings, and the contempt punishments, were for violations of prohibitory orders, so that the contempts alleged, and the injuries allegedly caused, were treated as accomplished facts.[8]

Second, the contempt punishments took the form of determinate fines, payable to the court, in amounts (totaling $52 million) that do not even purport to have any relation to any costs or injuries caused by the contempts, so that the fines are wholly noncompensatory in their nature.[9]

Third, the punishments were structured as determinate fines, fixed in amount once a contempt had been found, not as punishments that the defendants, once held to be in contempt, could purge.[10]

---

full force and effect until the final determination of the basic issues arising under the said agreement. [330 U.S. at 305.]

Thus, this Court made clear that the United Mine Workers and its officers were *not* subject to a broad prohibitory order—*e.g.*, do not strike—but rather to a mandatory order requiring that the Union and its officers undertake to perform the enumerated, discrete, affirmative acts (set out above). The *Mine Workers* Court thus treated the contempt proceeding there as one to secure compliance with a mandatory order that is properly classified as civil under *Gompers.*

[8] *See Hicks,* 485 U.S. at 632-33 (emphasizing "[t]he distinction between refusing to do an act commanded . . . and doing an act forbidden"; *quoting Gompers*). *See generally* pp. 16-18, *supra.*

[9] *See Hicks,* 485 U.S. at 631-32 (a fine "is remedial when it is paid to the complainant, and punitive when it is paid to the court"). *See generally* pp. 18-19, *supra.*

[10] *See Hicks,* 485 U.S. at 631-32 (a fine payable to the court may be "remedial when the defendant can avoid paying the fine simply by performing the affirmative act required by the court's order"); *id.*, at 633 (civil contempt defendant "can end the [sanction] and

In sum, the contempt fines at issue in this case most assuredly constitute "criminal penalties," as this Court defined that term in *Hicks. See* 485 U.S. at 632.[11]

3. Against all of the foregoing, the Virginia Supreme Court set up the following alternative approach to distinguishing criminal contempt from civil contempt: where a court issues an order that sets out a prohibition against engaging in certain conduct (and does not set out the specific penalty that will be imposed in the event of a violation), and the defendant thereafter violates that prohibition, the court may *only* impose a penalty in *criminal* contempt; in contrast, where a court issues an order that sets out *both* a prohibition against engaging in certain conduct and a specified penalty in the event of a violation, and the defendant thereafter violates that prohibition, the court may impose the specified penalty in *civil contempt,* even if the penalty is otherwise indistinguishable from a traditional criminal penalty. *See* Pet. App.

---

discharge himself at any moment by doing what he had previously refused to do"); *id.* (civil contempt defendants "carry the keys of their prison in their own pockets"); *Shillitani,* 384 U.S. at 370-71 ("[t]he conditional nature of the [sanction]" justifies its characterization as civil contempt). *See generally,* pp. 17-18, *supra.*

[11] We also note the explicit statement of the trial court that these contempt fines were imposed, in large part, not as a remedy running to the complainants, but as a deterrent sanction imposed to "protect[] the rights of . . . the general public as well" (Pet. App. 44a; *see also id.* at 45a), and to vindicate the public authority of the court (J.A. 55-58; *see* note 12, *infra*). These interests, of course, are the very interests that, according to *Hicks* and *Gompers,* are to be vindicated through the use of *criminal* contempt, not civil contempt. *See Hicks,* 485 U.S. at 631 ("If it is for civil contempt the punishment is remedial, and for the benefit of the complainant. But if it is for criminal contempt the sentence is punitive, to vindicate the authority of the court.") (*quoting Gompers,* 221 U.S. at 441). *See also Gompers,* 221 U.S. at 441, 445 (a civil contempt order is "not to vindicate the authority of the law" and has "nothing in the nature of a . . . judgment imposed for public purposes"). *See generally,* pp. 14-15, *supra,* and pp. 29-30, 33 & 36-37, *infra.*

15a. The Virginia court's scheduled penalty/unscheduled penalty dichotomy cannot withstand reasoned scrutiny.

(a) The Virginia Supreme Court's approach is *not* generated by, and does *not* provide, any basis for distinguishing criminal contempt from civil contempt that is grounded in the history or the logic of contempt law, or in the history or logic of the criminal law and the civil law in general.

History teaches that the imposition of previously stated penalties for the violation of previously stated prohibitions is as much the province of the criminal law as the imposition of previously unstated penalties. The law of crimes has historically been, and remains generally, a law of stated prohibitions against wrongful actions, coupled with stated noncompensatory penalties (imprisonment, fine, or forfeiture) for violations of these prohibitions. *See, e.g.*, W. LaFave & A. Scott, Jr., *Criminal Law* § 3.3 (2d ed. 1986); 1 P. Robinson, *Criminal Law Defenses* § 86(a) (1984).

Since this Court's decisions teach that the province of criminal law generally is the province of criminal contempt, a contempt proceeding that results from such actions and provides such penalties must provide the safeguards that the Constitution mandates for criminal proceedings. *E.g., Bloom*, 391 U.S. at 201. Very simply stated, a contempt proceeding that imposes on the defendant scheduled, determinate, noncompensatory fines, payable to the court, for the defendant's violation of a previously issued prohibitionary injunction is a proceeding that, in all relevant respects, *is indistinguishable from a traditional criminal proceeding*. The fact that the fines were scheduled in advance does not alter the identity between the contempt proceeding and other criminal proceedings one whit.

(b) Under the *Gompers-Hicks* framework, fines and imprisonment are imposed through civil contempt proceedings only in a narrow class of situations that is different in kind from the class of situations tried through

criminal proceedings. The scheduled penalty/unscheduled penalty dichotomy that was adopted by the courts below does not establish any such line of demarcation, and, as a result, fails in its function: to allocate to the criminal contempt domain all the contempt proceedings that are in substance criminal proceedings.

In *Mine Workers, supra,* this Court observed that civil contempt sanctions may be directed at either of two ends: "[1] to coerce the defendant into compliance with the court's order, and [2] to compensate the complainant for losses sustained." 330 U.S. at 303-304. The Virginia Supreme Court did not purport to hold, and respondent does not urge, that the fines at issue here—which are payable to the court in amounts unrelated to any losses the complainant incurred—are "to compensate the complainant for losses sustained." Rather, the court below sought to fit these fines within the category of "coercive" civil contempt sanctions, a category that in this Court's jurisprudence has been limited to sanctions designed to secure the performance of previously ordered affirmative acts. *See* pp. 16-19, *supra*.

As this Court has recognized, the term "coercive" in its most general sense includes virtually all civil contempt sanctions as well as all criminal contempt sanctions. *See, e.g., Hicks*, 485 U.S. 635-636; *Gompers*, 221 U.S. 443; *Bessette v. W. B. Conkey*, 194 U.S. 324, 326 (1904). That is so because the imposition of any sanction for disobedience—including a sanction that is retributive and punitive—"tends to prevent a repetition of the disobedience." *Hicks*, 485 U.S. at 635-636 (*quoting Gompers*, 221 U.S. at 443). Thus, the term "coercive," when used to differentiate *civil* contempt sanctions from *criminal* contempt sanctions, —if it is to have any differentiating content at all—must denote some effect other than simply "tend[ing] to prevent a repetition of the disobedience." The *Gompers-Hicks* prohibitory/mandatory dichotomy provides that content.

If a court threatens to impose sanctions for a possible future violation of a *prohibitory* order, the threatened sanction "coerces" compliance in the sense—and only in the sense—that all stated legal norms with stated penalties for violation coerce compliance: the coercion takes the form of deterring wrongful conduct by defining that conduct as wrongful and by threatening punishment for any future violation. And, in this circumstance, the only sense in which a defendant controls his own destiny with respect to the imposition of sanctions—*viz.*, the only sense in which he "carries the keys of his prison in his own pocket," *Hicks,* 485 U.S. at 633 (*quoting In re Nevitt,* 117 Fed. at 461)—is the sense in which any member of the general public can avoid criminal law sanctions: by conducting himself so as not to violate the prohibitions of the criminal laws.

In contrast, when the underlying injunction is *mandatory,* a conditional penalty for the failure to take the required act *does* have a "coercive" effect that is different in kind. The sanction in the mandatory injunction context is *entirely prospective* in its orientation, and is focused solely on securing a benefit *for the complainant.* Precisely for that reason, once the defendant has performed the required act, the defendant's civil contempt is deemed to be fully purged, despite the prior disobedience. This kind of purely prospective and remedial coercion is alien to the criminal law. Equally to the point, the nature of mandatory injunctions minimizes the dangers of judicial abuse. The defendant may at any time bring an end to the sanctions (and purge himself of contempt) simply by performing the discrete, required act. *See Shillitani, supra,* 384 U.S. at 370-371.

(c) As the foregoing would lead one to expect, the Virginia Supreme Court's proposed rule has the potential to shrink criminal contempt to the verge of invisibility. To avoid the inconvenience of meeting the Constitution's requirements for criminal cases, all that a trial judge need

do is announce in advance that, if his prohibitory order is violated, he will impose a punitive fine or a jail sentence. Doing so, under the proposed rule, would transform any such sanction imposed for subsequent disobedience into a *civil* contempt sanction. Given the significant procedural protections the Constitution provides to a defendant in a criminal proceeding, there is every reason to believe that if complainants and trial courts can secure all the benefits of criminal punishments while dispensing with the constitutional prerequisites of a criminal proceeding, that will be their preferred course.

In short, the Virginia Supreme Court's rule for classifying contempt proceedings as criminal or civil can not be squared with this Court's rules and is fatally flawed in its own terms. That in itself is sufficient to require reversal of the decision below; but, as we now show, there is far more.

B. The Continued Prosecution of "Civil" Contempt Orders by a Court-Appointed Officer After the Full and Final Settlement of the Main Civil Action

This Court's decisions establish that a contempt proceeding cannot *first* be tried through "civil" contempt procedures *and then* be held to generate contempt sanctions that are beyond the capacity of the private civil parties to terminate through a settlement. In this regard, as in the regard already canvassed, *Gompers, supra,* is the governing precedent. And, since the Virginia Supreme Court held to the contrary, *Gompers* requires reversal of the decision below on this added ground.

1. The contempt proceedings here were instituted at the motion of—and were prosecuted by—private civil complainants; were styled by the trial court as part of those complainants' preexisting civil litigation against the defendants; and were treated by the trial court as civil proceedings ancillary to the preexisting civil litigation. Indeed, the trial court repeatedly rejected defendants' claims that the proceedings were criminal in character.

Nevertheless, the trial court *denied* the private civil parties' joint motion—submitted on the full settlement of all civil disputes between them—to terminate these "civil" proceedings and to vacate these "remedial" and "civil" fines.

Instead, the trial court responded to the joint motion and settlement by appointing an individual who previously had not been involved in any way in the litigation to serve as a "special commissioner," and by charging that individual with an independent duty to the court to defend the contempt judgments on appeal and to prosecute any further proceedings necessary for the collection of all accumulated contempt fines.

In so doing, the trial court, by its own admission, was *not* seeking to vindicate *any remedial interests of a private litigant* (since all the civil litigants in the underlying action had relinquished all such interests through their settlement and joint motion to terminate the proceedings). Indeed, the trial court made it clear that the special commissioner was appointed precisely because there was no longer any existing interest of a private litigant in the further enforcement of the contempt fines. Of equal importance, that court justified its actions as necessary to the public's interest in vindicating the authority of the courts.[12]

---

[12] According to the trial court, to allow the contempt proceeding to be terminated by private settlement would be to allow a litigant who had violated judicial orders, and had thereby undermined judicial authority and public order, to escape punishment:

> [E]very time there is a willful violation of the Court's Order, it is an affront to the authority and the dignity of the power, if you will, of this Court and to the people in this community. It is an eating or tearing down of this Court's power to administer the law. And this Court is convinced . . . all Courts are vested with the power and charged with the duty of enforcing [their] Decrees, regardless of the purpose that the Decrees are put down for. Because those Decrees are mandates of law . . . the Court must have the power to enforce those mandates if organized society is to be maintained.
>
> . . . [T]he collection of these fines [is] the Court's solemn duty . . . not only to ensure the rights of the private parties, but also to ensure the rule of law. And although it is certainly relevant to the Court's consideration that the parties in the civil suit have come to an agreement with regard to their interests and have asked the Court to vacate or suspend, what have you, all of the penalties that have been assessed, their agreement is not controlling on this Court.
>
> . . . [T]he Court is convinced that although . . . [a] particular agreement may very well satisfy the economic needs of the parties, it does not speak to the interest of this Court. . . . [T]he Court must be sure that . . . all parties must know and understand that Courts are not pieces on a game board to be manipulated and used by the players as they will. [J.A. 55-57.]

In a subsequent opinion, the trial court justified its position that the parties did not have the right to settle all claims on the basis that the court had *initially* imposed the contempt fines, not only to vindicate the remedial needs of the private complainants, but also to vindicate the *public* interest in public order and obedience to law. *See* Pet. App. 44a ("as the strike proceeded, the protection . . . granted by the Court was more and more for the general public . . . protecting the rights not onlyof the litigants, but the general public as well"); *id.* at 45a ("From its institution, and more as it proceeded, this case has involved the protection of the rights of the general public in addition to those of the plaintiffs."). This *public* interest, the court explained, could not be relinquished by private settlement. *See* Pet. App. 47a.

Following the trial court's lead, the Virginia Supreme Court reasoned that, regardless of the interests or wishes of the private civil parties, the "[c]ourts of the Commonwealth must have the authority to enforce their orders by employing coercive, civil sanctions if the dignity of the law and public respect for the judiciary are to be maintained." Pet. App. 17a.

2. (a) The *Gompers* case—as we have noted—involved a challenge to a contempt order that imposed a term of imprisonment and a monetary obligation on a group of labor leaders at the motion of a company that

had brought a civil action against those leaders and their labor organization for conducting an unlawful labor boycott. The company had obtained an injunction against the boycott, the labor leaders were charged by the company with violating the injunction, and the company sought relief for such violations through civil contempt. The trial court held the defendants in contempt and imposed contempt penalties, but before the penalties were actually enforced, the civil litigants in *Gompers*—like the civil litigants here—reached a full settlement of the underlying litigation between them. *See* 221 U.S. at 451.

On these facts, this Court ordered the dismissal of all outstanding civil contempt sanctions and the termination of all further civil contempt proceedings. The *Gompers* Court explained that: "When the main case was settled, *every proceeding which was dependent on it, or a part of it, was also necessarily settled.*" 221 U.S. at 451 (emphasis added). Thus, any proceeding to enforce previously imposed civil contempt penalties "necessarily ended with the settlement of the main cause of which it is a part." *Id.* at 452.

Equally to the point, the *Gompers* Court was at pains to make it clear that the determination that a contempt proceeding survives private settlement—so that it may be independently pursued by the court for the vindication of public purposes—is a determination that marks a *defining distinction* between criminal contempt and civil contempt. While the *civil* contempt proceeding at issue in *Gompers* "necessarily ended" with settlement, the Court was quick to add that

> If [the contempt proceeding] had been a separate and independent proceeding at law for criminal contempt, to vindicate the authority of the court, with the public on one side and the defendants on the other, it could not, in any way, have been affected by any settlement which the parties to the equity

> cause made in their private litigation. [221 U.S. at 451 (internal citations omitted).] [13]

(b) A civil contempt proceeding, as *Gompers* put it, is a form of civil remedy in an underlying civil case; it is "not to vindicate the authority of the law, but is remedial, and is intended to coerce the defendant to do the thing required by the order for the benefit of the complainant." 221 U.S. at 442. Because it is "remedial", a civil con-

---

[13] In both regards, *Gompers* is firmly grounded in this Court's prior decision and in the common law.

This Court had previously held, in *Worden v. Searls*, 121 U.S. 27 (1887), that an outstanding *civil* contempt fine for violation of a court order must be dismissed whenever the complainant no longer has a legitimate remedial interest in its enforcement. In *Worden*, the Court dismissed proceedings to enforce outstanding civil contempt fines because the legal theory of complainants' underlying case was rejected on appeal. But the *Worden* court specified that —since the "injunction was in full force" at the time of the violation—the dismissal of the civil case should be "without prejudice to the power and right of the court to punish the contempt . . . by a proper [criminal] procedure." *Id. See Gompers*, 221 U.S. at 451 (*citing Worden*).

The common law sources also recognize the right of a party to settle civil contempt orders, but not criminal contempt orders. *See Seaward v. Patterson*, 1 Ch. 545, 556 (1897) ("In [civil contempt] the person who is interested in enforcing the order enforces it for his own benefit; in [criminal contempt], if the order of the court has been contumaciously set at naught, *the offender cannot square it with the person who has obtained the order and save himself from the consequences of his act*" (emphasis added)); 4 Blackstone, *Commentaries on the Laws of England*, 391 (1769) (discussing the power of the crown to pardon for criminal contempts, but noting that "where private justice is principally concerned in the prosecution of offenders . . . in appeals of all kinds (which are the suit, not of the king, but of the party injured) *the prosecutor may release*, but the king cannot pardon") (emphasis added)). *See generally* Beale, *Contempt of Court, Criminal and Civil*, 21 Harv. L. Rev. 161, 170 (1908) ("a waiver of the terms of the decree by the other party to the suit put an end to the imprisonment for [civil] contempt"); 1 Daniell, *Chancery Practice* 464-470 (2nd ed., London, 1845) (discussing waiver of civil contempt in traditional equity courts).

tempt proceeding is "instituted, entitled, tried, and up to the moment of sentence, treated as a part of the original cause in equity." *Id.* at 445. In such a proceeding, the civil complainant is "not only the nominal, but the actual party on the one side, with the defendants on the other." *Id.* As "[t]here is nothing in the nature of a criminal suit or judgment imposed for public purposes" in such a proceeding, the complainant is acting "in its own right in an equity cause, and not as a representative of the [government] prosecuting a case of criminal contempt." *Id.* Accordingly, as *Gompers* held, each civil contempt order "necessarily end[s] with the settlement of the main cause of which it is a part." *Id.* at 452.

A criminal contempt proceeding, in contrast, *is* a proceeding "to vindicate the authority of the court." *Gompers*, 221 U.S. at 442. As such, it is normally treated as "a separate action, one personal to the defendants, with the defendants on one side and the court vindicating its authority on the other." *Id.* at 445 (*quoting* the *Gompers* court of appeals decision). The interests at stake are *not* simply the private interests of a civil complainant but the *public* interest in the vindication of public authority, for which the court, not any private litigant, has primary responsibility. *Id.* Accordingly, a criminal contempt proceeding—like any other *criminal* proceeding, and wholly unlike any private *civil* proceeding—"could not in any way, have been affected by any settlement which the parties to the equity cause made in their private litigation." *Id.* at 451.[14]

[14] The reasoning of the *Gompers* decision, like its holding, is firmly grounded in this Court's prior decisions and the relevant common law authorities.

This Court had previously recognized that the purposes of civil contempt proceedings and criminal contempt proceedings were wholly distinct, with the former having the status of a *remedial* proceeding in which a civil litigant is vindicating his private interests with respect to a private wrong, and with the latter having the status of a punitive proceeding in which the court itself is vindicating its own public authority in response to the public crime of contempt. *See, e.g., Doyle v. London Guarantee & Accident Co.*, 204 U.S. 599, 604-605 (1907); *Bessette v. W. B. Conkey Co.*, 194 U.S. 324, 328 (1904) (*quoting In re Nevitt*, 117 Fed. 448, 458 (8th Cir. 1902)). *See also Worden v. Searls, supra*; *Re Christensen Engineering Co.*, 194 U.S. 458 (1904).

The relevant common law authorities were to the same effect. *See, e.g., King v. Myers*, 1 Durn. E. 265, 266 (K.B. 1786) (unlike criminal contempt, civil contempt is "only in the nature of a civil execution"); *King v. Edwards*, 9 B. & C. 651, 652 (1829) (civil contempt is "in the nature of civil process"); 1 Daniell, *supra*, at 464 (civil contempt proceeding is "a matter merely between the parties"). 2 Daniell, *supra*, at 1020 ("process of contempt" was normal means of civil enforcement in equity courts).

(c) To be sure, *Gompers* recognized that the same conduct can give rise to both civil and criminal contempt liability, and that a proceeding for either kind of contempt may have the "incidental effect" of partially serving the purposes of the other. 221 U.S. at 443. But *Gompers* emphasized that the distinction between civil contempt proceedings and criminal contempt proceedings "involve[s] substantial rights and constitutional privileges." *Id.* at 444. *Gompers*, therefore, holds that the character of a contempt sanction must correspond to the civil nature or criminal nature of the proceedings which generated the sanction. *Id.* To allow civil proceedings to generate sanctions that are of a criminal character, *Gompers* explained, would be to allow "a departure—a variance—between the procedure adopted and the punishment imposed" that would be "as fundamentally erroneous as if . . . an action of 'A vs. B, for assault and battery,' [generated a] judgment . . . that the defendant be confined in prison for twelve months." *Id.* at 449.

The decision below constitutes just such "a departure" from, or "variance" between, the procedures used and the punishments imposed. The trial court first insisted, throughout the contempt proceedings, that *only* civil contempts were at issue, and denied to the defendants the procedural safeguards, such as trial by jury, that the Constitu-

tion mandates in criminal proceedings. That court then insisted that its "civil" contempt orders be clothed with the precise attribute that *Gompers* holds is unique to criminal contempt orders—*viz.*, the capacity to survive a full private settlement—so that the *public* interest in vindication of the court's authority would be served. *See* pp. 26-27 & n.12, *supra*.

Indeed, in order to vindicate this public interest—after the full settlement by the private parties of all private disputes—the trial court was compelled to radically redesign the very structure of the litigation. In essence, that court abandoned the normal structure of civil litigation. By appointing a stranger to the litigation to take over the case as a "special commissioner," and by charging that individual with prosecuting the defendants as a representative of the court, the trial court adopted the structure which *Gompers* recognizes as the norm in criminal contempt litigation.[15]

In all of these regards, the decision below is contrary to *Gompers* and for that reason must be reversed.

(d) The trial court, the Virginia Supreme Court, and respondent Bagwell, have so far attempted to distinguish *Gompers* on the basis that the monetary contempt sanction at issue there (a "compensatory" fine "to be paid to

[15] *See Gompers*, 221 U.S. at 445 (criminal contempt is a "separate" proceeding "with the defendants on one side and the court vindicating its authority on the other").

This Court has recently noted that, in the context of *criminal* contempt, the practice followed by the trial judge in this case is a normal and acceptable practice. *See Young v. Vuitton*, 481 U.S. 787 (1987) (judge appointed a private attorney to prosecute a criminal contempt, on behalf of the judge, against a party who committed contempt in the course of a separate civil case).

In contrast, within the confines of civil litigation, it is neither normal nor generally accepted for judges to appoint private individuals to act on their behalf in pursuing litigation goals beyond those that the civil parties choose to litigate. *See Webster Eisenlohr v. Kalodner*, 145 F.2d 316 (3d Cir. 1944), *cert. denied*, 325 U.S. 867 (1945).

the complainant") was "remedial" in nature, while the instant contempt sanction (a "coercive, civil" fine to be paid to the court) is a civil sanction that, because it is "coercive," may be enforced purely in order to vindicate the authority of the court, independent of any "remedial" interest of the private civil litigants. *See* Pet. App. 18a; Opp. Br. 27-28.

This argument fundamentally mischaracterizes the *Gompers* decision. The *Gompers* Court determined that settlement between the parties terminates *all* civil contempt proceedings because such proceedings are—and must be—"remedial" proceedings, in which *all* sanctions are issued "for the benefit of the complainant"; civil contempt proceedings are *not*—and *cannot be*—proceedings in which individuals face punitive sanctions "to vindicate the authority of the court." 221 U.S. at 441. Indeed, the *Gompers* court made it quite clear that the distinction obtains where the civil contempt remedy is "coercive" *and* where it is "compensatory." As *Gompers* put it, a "coercive" civil contempt order is "not inflicted as a punishment, but is intended to be remedial by coercing the defendant to do what he had refused to do" and thereby to benefit the civil complainant. *Id.* at 442.

3. In the years since *Gompers*, the aspects of *Gompers* relevant here have been repeatedly applied, reaffirmed, and, in one significant respect, expanded.

(a) *Gompers*' basic premises—that civil contempt proceedings are remedial proceedings; that civil contempt orders are remedial orders; that such proceedings (and orders) are thus for the private benefit of the civil complainant; and that such proceedings (and orders) are therefore distinct from criminal contempt proceedings (and orders) which are designed to vindicate the public authority of the law and the courts—have remained at the center of this Court's jurisprudence.[16]

[16] *See Hicks v. Feoick, supra*, 485 U.S. at 631-632 (A "critical feature" of the distinction between civil and criminal contempt is

(b) This Court has also repeatedly recognized the related proposition that a civil contempt proceeding is to be treated as a part of the underlying civil litigation (since it is merely a remedial proceeding ancillary to the main civil case), while a criminal contempt proceeding is to be treated as a distinct dispute between the defendant and the court itself.[17]

---

that in "civil contempt the punishment is remedial, and for the benefit of the complainant," while in "criminal contempt the sentence is punitive, to vindicate the authority of the court . . . . The Court has consistently applied these principles." (*citing Gompers*)); *Shillitani v. United States*, 384 U.S. 364, 368 (1966) (a court's imposition of contempt "is essentially a civil remedy designed for the benefit of other parties"); *Penfield v. SEC*, 330 U.S. 585, 590 (1947) (punishment for civil contempt "is wholly remedial, serves only the purposes of the complainant, and is not intended as a deterrent to offenses against the public" . . . [it is] then employed not "to vindicate the public interest but as coercive sanctions to compel the contemnor to do what the law made it his duty to do" (*citing Gompers*)); *McCrone v. United States*, 307 U.S. 61, 64 (1939) ("a contempt is considered civil when the punishment is wholly remedial, serves only the purposes of complainant, and is not intended as a deterrent to offenses against the public" (*citing Gompers*)); *Ex Parte Grossman*, 267 U.S. 87, 111 (1925) ("For civil contempts, the punishment is remedial and for the benefit of the complainant . . . [f]or criminal contempts, the sentence is punitive in the public interest to vindicate the authority of the court and to deter other like derelictions." (*citing Gompers*)); *Terminal Railroad Assoc. v. United States*, 266 U.S. 17, 27 (1924) (where contempt "proceedings were instituted by [private complainants], not to vindicate the authority of the court, but to enforce rights claimed by them under the original decree . . . [t]he controversy is between [the civil parties, and the] . . . nature of the proceedings is civil and remedial, not criminal" (*citing Gompers*)); *Re Merchants' Stock & Grain Co.*, 223 U.S. 639, 641 (1912) (contempt is "deemed [civil and] remedial when its purpose is to indemnify the injured suitor, or coercively to secure obedience to a mandate in his behalf, and is deemed [criminal and] punitive when its purpose is to vindicate the authority of the court by punishing the act of disobedience as a public wrong" (*citing Gompers*)).

[17] *See, e.g., Leman v. Krentler-Arnold Hinge Last Co.*, 284 U.S. 448, 454 (1932) ("proceeding for civil contempt for violation of

(c) Given this continued adherence to *Gompers'* premises, it should be no surprise that *Gompers'* holding regarding settlements has also been reaffirmed. Thus, in *Leman v. Krentler-Arnold Hinge Last Co., supra,* this Court restated at some length, and then endorsed, *Gompers'* settlement rules:

> The question of the relation of [a civil contempt] proceeding to the main suit was fully considered in the case of *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, and it was determined that the [civil contempt] proceeding was not to be regarded as an independent one, but as a part of the original cause . . . . The distinction was made in this respect between such proceedings and those at law for criminal contempt which "are between the public and the defendant, and are not a part of the original cause." In the *Gompers* Case . . . as there had been a complete settlement of all matters involved in the equity suit, the contempt proceeding was necessarily ended. [284 U.S. at 452-53.]

And, in *Mine Workers, supra,* this Court again cited *Gompers'* settlement rules with approval. *See* 330 U.S. at 295 n. 61. As *Mine Workers* puts it,

> The right to remedial relief falls with an injunction which events prove was erroneously issued, *Worden v. Searls, supra,* at 25, 26 . . . . In accord in the case of settlement is *Gompers v. Buck's Stove & Range Co.*, 221 U.S. 418, 451-2 (1911): ". . . when

---

the injunction should be treated as a part of the main cause"); *Oriel v. Russell*, 278 U.S. 358, 363 (1929) ("civil contempt . . . is to be treated as a mere step in the [underlying] proceedings"); *Michaelson v. United States*, 266 U.S. 42, 64-65, 67 (1924) ("the proceeding for criminal contempt, unlike that for civil contempt, is between the public and the defendant, [and] is an independent proceeding at law, and no part of the original cause" (*citing Gompers*)); *Re Merchants' Stock & Grain Co., supra*, 223 U.S. at 641-42 (a civil contempt order as a "remedial" order is "merely interlocutory").

> the main cause was terminated . . . between the parties, the complainant did not require and was not entitled to any compensation or relief of any other character." [*Id.* (ellipses within *Gompers* quotation appear in *Mine Workers*)].[18]

(d) Indeed, in one highly significant respect, the trend since *Gompers* has been to substantially strengthen the doctrinal premises that underlie the *Gompers* settlement rules.

This Court has placed an increasing emphasis on the importance of ensuring that, if civil procedures are used to generate a contempt order, *no aspect* of the contempt order may serve uniquely punitive purposes. The Court has thus made explicit that "where a judgment of contempt is embodied in a single order which contains an admixture of criminal and civil elements, the criminal aspect of the order fixes its character for purposes of procedure on review." *Penfield Co. v. SEC, supra,* 330 U.S. at 591.[19]

---

[18] The Court also followed the logic of *Gompers* in *Shillitani, supra,* in holding that an imprisonment for civil contempt—imposed in order to coerce an individual into giving grand jury testimony—must end whenever the remedial need for such an imprisonment ends, *viz.*, when the term of the relevant grand jury ends. 384 U.S. at 370-371. *Shillitani* reached this result despite the fact that the imprisonment order was for a fixed term (although with a purge clause) and the fixed prison term had not ended (nor had the contemnor complied with the order) prior to the expiration of the grand jury. Relying on a principle that would be equally applicable in explaining *Gompers*' settlement rules, the Court stated that in enforcing civil contempt orders "a court must exercise '[t]he least possible power adequate to the end proposed.' *Anderson v. Dunn,* 6 Wheat. 204, 231 (1821); *In re Michael,* 326 U.S. 224, 227 (1945)." *Shillitani,* 384 U.S. at 371.

[19] *See Hicks, supra,* 485 U.S. at 638 ("if *both* civil and criminal relief are imposed in the same proceeding, then the criminal feature of the order is dominant and fixes its character for purposes of review"); *Nye v. United States,* 313 U.S. 33, 42-43 (1941) (same); *McCrone v. United States, supra,* 307 U.S. at 64 (civil contempt punishment "is *wholly* remedial, serves *only* the purposes of the complainant, and is *not* intended as a deterrent to offenses against the public" (emphasis added)); *Farmers & Mechanics National Bank v. Wilkinson,* 266 U.S. 503, 506 (1925) ("order [that is] part punitive, takes character from its criminal feature"); *Union Tool Co. v. Wilson,* 259 U.S. 107, 110 (1922) ("[w]here a fine is imposed . . . partly as punishment, the criminal feature of the order is dominant"); *Re Merchants' Stock & Grain Co., supra,* 223 U.S. at 641 (same). *See also Re Christensen Engineering Co.,* 194 U.S. 458 (1904).

The contempt orders in the instant case contain an element that is indisputably punitive, the capacity to survive a full civil settlement in which the complainant relinquishes all remedial interests. This element is wholly unrelated to the remedial interests of the civil complainant and serves *only* to vindicate public authority. Accordingly, these contempt orders must be deemed criminal in nature. And, given that these orders grow out of civil proceedings—in which basic constitutional protections due in criminal proceedings were not granted—these orders cannot stand.

II. THE EXCESSIVE FINES ISSUES

The "civil" contempt fines of $52 million that have been made payable to the court in this case are—assuming the fines are properly considered "civil"—among the largest civil contempt fines ever levied.[20] Those fines do not rest on any claim of compensatory damages, or, indeed, on any current claim of any kind by any of the private parties to the underlying civil litigation.

The trial judge, in levying the fines, provided no rationale for the schedule of fines he announced and followed.

---

[20] We have examined all cases classified under the West Key Number System as Contempt 75 (Amount of Fine) and discovered no case imposing a civil contempt sanction equal to or in excess of $52 million. We have been informed by the United States Department of Justice that the United States does not compile statistics related to the amounts of civil contempt fines, and is not aware of any other entity which might do so.

See Pet. App. 111a. The amount of the fines that he scheduled for particular acts did not even purport to be in any way calibrated to the harm caused. Nor was the schedule derived from any legislative determination with respect to the appropriate penalty for the covered act. Moreover, the judge imposed the scheduled fines mechanically, without regard for the severity of, or the consequences which flowed from, any particular cited action.

In rejecting the Union's argument that the fines imposed were excessive as a matter of federal constitutional law, the Virginia Supreme Court's major premise was that the law of this Court regarding the constitutional limitations on excessive fines "has nothing to do with coercive, civil fines imposed for contempt of court." Pet. App. 18a. The Virginia court then dismissed all of petitioners' excessive fines claims in four sentences and without making any effort at establishing any relationship between the schedule of fines at issue and any specific harms caused. Pet. App. 18a-19a. Rather, the Virginia court justified the fines—without discussing what source of law or legal standard it was applying—on the basis that the coercive civil fines here are justified by the extent of the Union's resources and the fines' purpose to vindicate the trial court's authority and the "rule of law" under the circumstances. *Id.*

This disposition of petitioners' excessive fines claims is contrary to this Court's recent decisions, and the judgment below, if not reversed on the bases already presented, should thus be vacated and remanded in light of those decisions.

1. "The Excessive Fines Clause [of the Eighth Amendment] limits the Government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.' " *Austin v. United States*, —— U.S. ——, 61 L.W. 4811, 4813 (1993) (*quoting Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 265 n.6 (1989) ("at the time of the drafting and ratification of the [Eighth] Amendment, the word 'fine' was understood to mean a payment to the sovereign as punishment for some offense")). *Accord Alexander v. United States*, —— U.S. ——, 61 L.W. 4796, 4799-4800 (1993). And, this Court's prior precedents make unmistakably clear that a sanction—regardless of whether the court imposing that sanction calls it "civil" in nature or "criminal"—"*is* punishment as we have understood that term" if the sanction "cannot be said *solely* to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes." *United States v. Halper*, 490 U.S. 435, 448 (1989) (emphasis added). *See also Austin, supra*, 61 L.W. at 4815 n.12 & 4816 (*citing* and *quoting Halper*).

The "civil" contempt fines at issue here indisputably serve "retributive [and] deterrent purposes." Indeed, both the trial court and the Virginia Supreme Court expressly invoked such purposes to justify their refusal to dismiss the fines at issue on the full settlement of all the parties' civil claims. *See, e.g.*, Pet. App. 17a, 44a-45a; J.A. 55-58. *See also* pp. 26-27 & n.12, *supra*. Whatever may be the import of their retributive and deterrent design for purposes of assessing their validity as *civil* contempt sanctions, *see* pp. 21 n.11 & 25-37, *supra*, it follows inexorably from this Court's decisions regarding the meaning of "punishment" that these fines *are* punishment for purposes of the Eighth Amendment. All this being so, the court below was in error in its premise that the federal constitutional law of excessive fines "has nothing to do with coercive, civil fines imposed for contempt of court." Pet. App. 18a.

This Court has not yet articulated the governing factors in analyzing whether a particular fine is excessive. Instead, the Court announced a preference for a process of litigating elucidation in the lower courts as a prelude to elaborating the content of the Excessive Fines Clause. *See Austin*, 61 L.W. at 4816 ("[p]rudence dictates that

we allow the lower courts to consider that question in the first instance"); *Alexander,* 61 L.W. at 4800 ("[w]e think it preferable that this question [whether the fine was excessive] be addressed by the [lower court] in the first instance").

Against this background, the fines here must be vacated and remanded so that the Virginia court—having been made aware of the applicability of federal constitutional limitations—can address this question in the first instance.

2. Much of what we have said with regard to the Excessive Fines Clause has equal force with respect to the Due Process Clause. That clause of the Fourteenth Amendment "imposes [on the state] substantive limits 'beyond which penalties may not go.'" *TXO Production Corp. v. Alliance Resources Corp.* —— U.S. ——, 61 L.W. 4766, 4769 (1993) (*quoting Seaboard Air Line R. Co. v. Seegers,* 207 U.S. 73, 78 (1907)). In judicial determinations of whether a particular penalty is so grossly excessive as to violate the Due Process Clause, a "'general concer[n] of reasonableness . . . properly enter[s] into the constitutional calculus.'" *Id.* at 4770 (*quoting Pacific Mutual Life Ins. Co. v. Haslip,* 499 U.S. 1, 18 (1991)).

As noted, the Virginia Supreme Court proceeded on the basis that this Court's precedents regarding the federal constitutional limits on excessive fines do not govern civil contempt fines. Pet. App. 18a. Accordingly the Virginia court's discussion of this issue does not admit of the possibility that, even where a wrong is proved, there are "substantive limits 'beyond which penalties may not go.'" *TXO Production,* 61 L.W. at 4769.

Thus, on this basis as well, this Court should vacate the fines at issue, and remand for proper consideration of the constitutional limits on contempt fines imposed by the Due Process Clause.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment below.

Respectfully submitted,

Of Counsel:

ANDREW P. MILLER
2101 L Street, N.W.
Washington, D.C. 20037

VIRGINIA A. SEITZ
1000 Connecticut Ave., N.W.
Washington, D.C. 20036

DAVID L. SHAPIRO
1525 Massachusetts Avenue
Cambridge, MA 02138

ROBERT H. STROPP, JR.
EARL V. BROWN, JR.
900 15th Street, N.W.
Washington, D.C. 20006

JOHN R. MOONEY
1341 G Street, N.W.
Washington, D.C. 20005

WALTER KAMIAT
LAURENCE GOLD
(Counsel of Record)
815 16th Street, N.W.
Washington, D.C. 20006
(202) 637-5390